

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

AKORN HOLDING COMPANY LLC, *et al.*¹

Debtors.

Chapter 7

Case No. 23-10253 (KBO)
(Jointly Administered)

Re D.I. 106, 137, 274, 281

**FIRST AMENDMENT TO
REAL ESTATE PURCHASE AGREEMENT**

dated as of June 7, 2023

BY AND BETWEEN

**HIKMA PHARMACEUTICALS USA INC., BUYER AND GEORGE L. MILLER, THE CHAPTER 7 TRUSTEE
OF THE ESTATES OF AKORN HOLDING COMPANY LLC, AKORN INTERMEDIATE COMPANY LLC AND
AKORN OPERATING COMPANY LLC AS SELLER**

Dated: June 7, 2023

COZEN O'CONNOR

/s/ John T. Carroll III

John T. Carroll, III (DE No. 4060)

Simon E. Fraser (DE No. 5335)

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Counsel for the Trustee

George L. Miller

¹ The Debtors in these chapter 7 cases, along with the last four digits of their federal tax identification numbers, and cases numbers are Akorn Holding Company LLC (9190), Case No. 23-10253 (KBO); Akorn Intermediate Company LLC (6123), Case No. 23-10254 (KBO); and Akorn Operating Company LLC (6184), Case No. 23- 10255. The Debtors' headquarters is located at 5605 CenterPoint Court, Gurnee, IL 60031.

**FIRST AMENDMENT
TO REAL ESTATE PURCHASE AGREEMENT**

This FIRST AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT (this "Amendment") is dated and entered into as of June 7, 2023, by and between Hikma Pharmaceuticals USA Inc., ("Buyer"), George L. Miller, the chapter 7 trustee (the "Trustee" or "Seller") of the chapter 7 estates (collectively, the "Estates") of Akorn Holding Company LLC ("Holdings"), Akorn Intermediate Company LLC ("Intermediate") and Akorn Operating Company LLC ("Operating," and together with Holdings and Intermediate, "Debtors" and each entity individually, a "Debtor").

WHEREAS, the Purchaser and the Trustee entered into that certain Real Estate Purchase Agreement, dated as of May 25, 2023 (the "Purchase Agreement"), pursuant to which the Trustee agreed to sell, convey, assign and transfer to the Buyer, and the Buyer agreed to purchase and acquire from the Trustee, the Property, upon the terms, in the manner and subject to the conditions set forth in the Purchase Agreement;

WHEREAS, the Buyer and the Seller desire to make certain modifications and amendments to the Purchase Agreement, which modifications and amendments are set out in this Amendment; and

WHEREAS, the Buyer and Seller desire that all other terms and conditions of the Purchase Agreement remain in full force and effect.

NOW, THEREFORE, upon the terms and conditions set forth herein, the parties hereto, intending to be legally bound, and subject to Bankruptcy Court approval, hereby agree as follows:

1. General. The background set forth above is hereby incorporated by this reference and made a part hereof. Capitalized terms used but not otherwise defined in this Amendment shall have the meanings given to such terms in the Purchase Agreement.

2. Amendments.

(a) Section 8(c). Section 8(c) of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(c) Seller's and Buyer's Obligations Regarding Drug Products.

(i) Seller currently stores finished drug products, including controlled substances, active pharmaceutical ingredients (APIs), and excipients (collectively, the "**Drug Products**"), on (A) the Amityville Real Property, (B) 50 Lakeview Parkway, Vernon Hills, Illinois (the "**Vernon Hills Location**") and (C) 5605 CenterPoint Court Gurnee, Illinois (the "**Gurnee Location**"). These Drug Products and their disposal and destruction are subject to oversight and regulation by various governmental agencies including the U.S. Food and Drug Administration (the "**FDA**") and the Drug Enforcement Agency (the "**DEA**"). With respect to all of the Drug Products located at the Amityville Real Property, Vernon Hills Location, and/or the Gurnee Location, Buyer shall remove, dispose, and/or destroy the Drug Products located at the Amityville Real Property, the Vernon Hills Location, and the Gurnee Location in compliance with all obligations with respect to such Drug Products under applicable law and the rules and regulations of the FDA and the DEA (the "**Destruction Efforts**") for the amounts set forth in (ii) below. The

Destruction Efforts for Drug Products from the Vernon Hills Location will be completed no later than August 31, 2023. The Destruction Efforts for Drug Products located at the Gurnee Location and at the Amityville Real Property will be completed by no later than September 30, 2023. Seller shall inform Buyer by no later than June 20, 2023 if Seller wishes to exclude any Drug Products from the Destruction Efforts (the “**Excluded Products**”); otherwise Buyer will perform the Destruction Efforts on the understanding that they encompass all Drug Products located at the Vernon Hills Location, the Gurnee Location, and Amityville Real Property. Buyer shall complete all Drug Product Destruction Efforts exercising reasonable care; provided, however, the Buyer shall not assume any liability or obligations towards the FDA, DEA, or any third party or regulator for matters arising prior to the Destruction Efforts or relating to the Drug Products that are unrelated to Buyer’s Destruction Efforts. In the event the Buyer does not complete the Destruction Efforts associated with the Drug Products (other than the Excluded Products) from the Vernon Hills Location prior to August 31, 2023 and from the Gurnee Location prior to September 30, 2023 then Buyer shall pay the applicable lease payment on a per diem basis for any excess days of rent incurred to the extent such delay was within the Buyer’s control or due to Buyer’s fault.

- (ii) As compensation for Drug Products Destruction Efforts, Seller shall pay the Buyer:
 - a. For Drug Products at the Amityville Real Property One Million Two Hundred and Fifty Thousand Dollars (US\$ 1,250,000);
 - b. For Drug Products at the Vernon Hills Location Five Hundred Thousand Dollars (US\$ 500,000); and
 - c. For Drug Products at the Gurnee Location Two Million Two Hundred Fifty Thousand Dollars (US\$ 2,250,000) (the amounts set forth in this Section 8(c)(ii), each an applicable “**Removal Fee**” and collectively, the “**Removal Fees**”).

The Seller shall escrow the full amount of the Removal Fees from the Purchase Price. The fees and expense of the third party escrow agent shall be paid by the Buyer. The Seller and the Buyer shall negotiate in good faith a mutually acceptable escrow agreement, which shall be a condition to Closing. The Seller shall pay to the Buyer the applicable Removal Fee (less the Removal Fee Reduction, as defined below, if any), by wire transfer of immediately available funds, within five (5) business days following receipt of a written confirmation by the Buyer that the Drug Products Destruction Efforts have been completed in accordance with this Section 8(c). The Removal Fees shall be reduced on a pro rata basis for Excluded Products, which pro ration shall be calculated on a per-location basis based on the number of pallets of Excluded Products as against the total number of Drug Products pallets at the applicable location (the “**Removal Fee Reduction**”). In no event shall the Purchase Price be reduced by the Removal Fees.

3. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE AND THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE.

4. Effect of Amendment; Counterparts. This Amendment shall be deemed incorporated into and made a part of the Purchase Agreement. The provisions of this Amendment shall constitute an amendment to the Purchase Agreement, and to the extent that any term or provision of this Amendment may be deemed


expressly inconsistent with any term or provision in the Purchase Agreement, this Amendment shall govern and control. Except as expressly modified by the terms of this Amendment, all of the terms, conditions and provisions of the Purchase Agreement are hereby ratified and the Purchase Agreement remains in full force and effect. This Amendment may be executed by facsimile or PDF signature and in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when the counterparts have been signed by each of the parties and delivered to the other party.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date first written above.

SELLER:

GEORGE L. MILLER, AS TRUSTEE FOR THE
ESTATES

By: 
Name: George L. Miller
Title: Trustee

PURCHASER:

HIKMA PHARMACEUTICALS USA INC.

By: _____
Name: Brian Hoffmann
Title: President

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date first written above.

SELLER:

GEORGE L. MILLER, AS TRUSTEE FOR THE
ESTATES

By: _____
Name: George L. Miller
Title: Trustee

PURCHASER:

HIKMA PHARMACEUTICALS USA INC.

By: _____
DocuSigned by:
Brian Hoffmann
C3AABCD2CF1747E...
Name: Brian Hoffmann
Title: President